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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 001424

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SUBJECT: CODEL TIERNEY MEETS WITH PAKISTAN'S DEPOSED CHIEF JUSTICE

Classified By: Peter W. Bodde, Reasons 1.4 (b), (d)

¶1. (C) Summary. In a March 27 meeting with Codel Tierney, former Chief Justice Chaudhry and his lawyer Aitzaz Ahsan affirmed their commitment to seeing the Chief Justice return to his duties, along with other judges removed by President Musharraf following the November 3 State of Emergency. Chaudhry and Ahsan also described the stresses imposed on Chaudhry and his family by five-months of house arrest. End Summary.

¶2. (C) Codel Tierney (Representatives John Tierney, Keith Ellison, Jim Moran, Betty McCollum, Maurice Hinchey, and Barbara Cubin), accompanied by Polcouns, met March 27 with former Supreme Court Chief Justice Iftikhar Chaudhry and Aitzaz Ahsan, President of the Supreme Court Bar Association and Chaudhry's personal attorney. Also attending was Chaudhry's other attorney Athar Minallah.

¶3. (C) The former Chief Justice greeted the Codel warmly and welcomed their expressions of support during this traumatic period. His former counsel, Aitzaz Ahsan, did much of the talking as Chaudhry deferred to Ahsan on inquiries he felt were more of a "political" nature. The conversation began with both Chaudhry and Ahsan describing the conditions of the five-month house detention of the former Chief Justice and his family. He has four children including two teenage daughters and an eight-year old son with special needs. According to Ahsan, the son could not receive his proper medical treatment while police refused to allow his daughters to leave the home to attend school.

¶4. (C) Representative Tierney expressed his concern for Chaudhry and his family and noted that he and a part of the delegation had been in Pakistan during the November State of Emergency (SOE). Representative Tierney said he had some confidence that the political situation was improving and hoped there would be increased cooperation under the new government. Pakistan, he observed, had a bright future, despite the challenges it faced.

¶5. (C) Representative Moran asked if Chaudhry expected to be reinstated as Chief Justice. Chaudhry swiftly responded that reappointment was unnecessary as, under the constitution, he still held the position. He maintained the President's act in removing him had been unconstitutional and extra-judicial. Therefore, he had not been legally removed from the bench, but was being forcibly prevented from discharging his duties.

¶ 16. (C) The disposed Chief Justice also claimed Musharraf's judicial appointments following the SOE were invalid. Those judges, he pointed out, were hand-picked by Musharraf and had sworn allegiance to him, not to the constitution. They were illegally appointed to provide a favorable judgment in a single case to benefit one person - Musharraf.

¶ 17. (C) Chaudhry expressed confusion over Musharraf's sudden decision to declare the SOE, calling it a "miscalculation based on apprehension" that the Supreme Court would rule against Musharraf's eligibility to run for the Presidency. Chaudhry said he did not understand why Musharraf had assumed the decision would go against him. Chaudhry said he had always respected the President, but he did not understand why Musharraf had "hit the panic button." He speculated the President had increasingly perceived growing public support for the judiciary as a threat to his position.

¶ 18. (C) Representative Ellison asked what barriers prevented Chaudhry's reappointment. Ahsan replied there were no legal barriers - even the President and Attorney General had admitted their actions were unconstitutional and had only given a verbal directive for removal. Ahsan stressed that the justices remained in office but were being physically prevented from executing their duties.

¶ 19. (C) Ahsan observed that the Murree Declaration of the ruling coalition, which unofficially calls for the reinstatement of the pre-SOE judges within the first 30 days of the new government, could take effect with a simple majority vote. Ahsan said this was a welcome support measure that publicly conveyed the will of the people. He opined

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that a two-thirds majority was not required to pass the resolution - that would imply the SOE actions had legal validity. In any event, Ahsan repeated, the legal status of the justices would not be affected by any resolution as they had not been removed legally.

¶ 10. (C) Codel members inquired what action would be taken regarding the judges who had taken the oath of allegiance to Musharraf. Noting the sensitivities of this issue, Chaudhry referred to the 7-member bench he led to counter the SOE orders and resulted in a restraining order to prevent the passage of the SOE extra-constitutional measures. Some of the justices, aware this restraining order existed, still took the oath to remain on the bench. Chaudhry heatedly stated that the actions of these judges were inappropriate. Ahsan agreed, saying that these justices could face civil legal actions.

¶ 11. (C) Representative Tierney asked how many jurists and attorneys had been suspended from practice following the SOE. Ahsan replied that approximately 100,000 were suspended and described a situation where many of these attorneys and activists were forced to turn to family members and friends for support, while moving out of their homes and removing their children from school. These men, he stressed, were not just deprived of their livelihoods, but "literally bludgeoned" during demonstrations when Islamabad was under siege by its own government.

¶ 12. (C) Representative Moran asked about the use of "suo moto" action by the Supreme Court. Chaudhry explained that the Court could take suo moto notice in a case where a public interest was involved or a fundamental right was at risk, even if the case did not fall within the Court's jurisdiction. As an example, Chaudhry referred to the India high court decision to protect the Taj Mahal from pollution by restricting vehicle access near the site. Ahsan also interjected that many sexual abuse cases would not have been resolved had the former Chief Justice not taken these suo moto actions. Chaudhry proudly noted that he personally had initiated more cases on suo moto than any prior Chief Justice.

¶13. (C) Finally, Chaudhry expressed his appreciation for the support of the legal fraternity, both in Pakistan and abroad, including the U.S. He had received many letters commending him for his defense of Rule of Law and reminding him he was not alone. Ahsan noted the National Law Review of America had declared Chaudhry "Lawyer of the Year" and the Harvard Law School Association had given him the Medal of Freedom.

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